

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ALEXANDER H.,

Claimant,

and

THE INLAND REGIONAL CENTER,

Service Agency.

OAH No. L 2006060029

**DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Bernardino, California, on July 17, 2006.

Vince Toms, Consumer Services Representative, represented the Inland Regional Center, the service agency.

Lori H., claimant's mother, advocate and conservator, represented claimant Alexander H., who was present during the fair hearing.

On July 17, 2006, the matter was submitted.

**ISSUE**

Should the service agency fund a supported living services program and a vocational day program for claimant through S.T.E.P., Inc.?

## FACTUAL FINDINGS

1. Claimant was born on May 17, 1983. He is a 23-year-old service agency consumer with qualifying diagnoses of mental retardation and epilepsy. Claimant has autistic-like tendencies and is profoundly deaf.

2. Claimant currently lives with his mother and his 16-year-old brother in the family home in Riverside, California. Claimant's mother, Lori H., is the duly appointed conservator of claimant and his estate.

3. Claimant suffered a birth injury which resulted in a medical malpractice claim. That claim was settled and resulted in a structured settlement which provides payments to claimant of \$1,600 per month with an annual cost of living increase. Lori H. is in the process of establishing a court-approved trust to oversee the management of claimant's settlement, which is necessary for claimant to qualify for SSI and IHSS benefits. Lori H. estimated the trust will be approved by the court in early September 2006.

4. Claimant is in good health. He functions at four-to-five-year-old levels. He is able to sit, stand and ambulate, and he has adequate gross motor skills, but he has fine motor deficits. Claimant has some self-help and hygiene skills, but he needs prompting. He is unable to care for himself. He has autistic-like behaviors, but he socializes with persons he knows. Claimant is profoundly deaf, and he communicates through his own version of ASL (American Sign Language) and non-verbal gestures. Claimant's capacity to use adaptive communicative devices is very limited.

5. Claimant has been described as a "people pleaser" who adapts slowly to new situations. He is pleasant and very likeable, but he does not advocate on his own behalf. Claimant responds well to positive reinforcement.

6. Claimant attended the California School for the Deaf in Riverside. He "aged-out" and did not receive a certificate of completion.

7. Claimant currently participates in a center-based vocational day program in Perris, located near the family home, which is operated by Exceed, a service agency vendor. Exceed provides a vocational experience for approximately 160 developmentally disabled individuals, about five percent of whom are deaf or hard of hearing.

Claimant leaves the family home for the Perris worksite at 8:00 a.m. on weekday mornings. He is transported by a driver vendored through the service agency. He arrives at the worksite around 8:30 a.m. Claimant remains at the worksite until 3:30 p.m., when he is driven back home. He arrives home at 4:00 p.m. or so, where he is met by his mother and/or brother. While he is at the worksite, claimant usually has lunch with other workers who are deaf or hard of hearing.

At the Perris worksite, claimant mostly engages in bench work, e.g. packaging and affixing samples to products. He is not proficient in tasks requiring fine motor skills and he is not permitted to use sharp instruments for safety reasons. Claimant has demonstrated slow but steady progress at Exceed as he has become more familiar with his assigned tasks.

Claimant has learned vocational skills through hand-on-hand instruction. Claimant's immediate supervisor communicates with claimant non-verbally, but not in ASL. Only three Exceed staff members have ASL skills, and only of them, the worksite manager, approaches competency. The worksite manager does not provide 1:1 supervision over claimant because of his managerial responsibilities. While Exceed provided staff members with an in-service introduction to ASL and while Exceed would like to present additional ASL training to its staff, funding is not currently available. For reasons that are not relevant to this decision, a 1:1 aide has not been provided for claimant.

During downtime, Exceed workers participate in free time activities and attend safety meetings. Claimant rarely participates in the free time activities because he lacks the self-initiative and understanding to join. He gains nothing from the safety classes because they are presented verbally and are not adequately interpreted.

Kevin Urtz, a highly skilled program manager who is in charge of the service agency's transition unit, acknowledged that the Exceed program was far less than ideal in meeting claimant's unique needs, but he believed that additional services and supports could be made available to provide claimant with better vocational opportunities.

8. In August 2005, Lori H. contacted Sharon Murray, claimant's consumer services coordinator, and asked about the possibility of placing claimant in a supported living services program operated by Strategies to Empower People, Inc. (S.T.E.P.), an organization located in the Sacramento area serving developmentally disabled persons with an emphasis on serving the deaf and the deaf and blind.

9. S.T.E.P. offers supported living services to developmentally disabled adults who are consumers of the Alta California Regional Center (ACRC) and S.T.E.P. accepts referrals of consumers from other regional centers with the expectation that the consumer will relocate to the greater Sacramento area and become an ACRC client.

S.T.E.P. provides individualized services to meet the consumer's daily living needs, emphasizing special services for deaf and hearing impaired clients including one-on-one instruction and support from independent living skills instructors and other support staff. All S.T.E.P. staff members who provided services to the deaf are fluent in ASL and are familiar with the deaf culture.

10. Murray investigated the S.T.E.P. program and spoke with Urtz. They explored the options available to claimant including generic resources, other programs which might meet claimant's needs locally, and the possibility of claimant becoming an ACRC client.

The service agency's decision-making process was delayed for a variety of reasons including difficulties in determining if claimant was or could become eligible for SSI and IHSS, budgetary issues, the status of claimant's trust, some uncertainty surrounding what was actually being covered in the S.T.E.P. supported living service budgets that were sent to the service agency, how long it might take for claimant to become accepted by the ACRC as a client, if at all, and the advisability of claimant leaving his natural supports and stable living environment in the Inland Empire to participate in a seemingly attractive but uncertain Northern California setting.

Some of these questions were not answered until the fair hearing.

11. According to Melanie Bazile-Fernandez, S.T.E.P.'s Executive Director, S.T.E.P. serves developmentally disabled adults living in the Sacramento area, with an emphasis on serving the deaf. S.T.E.P. operates an independent living services (ILS) program, which provides instruction for individuals with developmental disabilities who choose to live on their own in the community, and a supported living services (SLS) program, which provides more individualized services to meet a client's daily living needs including one-on-one instruction and support from independent living skills instructors. S.T.E.P. provides these services in the least restrictive environment. All SLS staff members who serve S.T.E.P.'s deaf clientele are fluent in ASL and many are deaf.

Numerous social and recreational activities are provided, and it is customary for S.T.E.P. consumers who are developmentally disabled and deaf to participate in the large, rich deaf culture existing in the Sacramento area. In addition, S.T.E.P. sponsors Joe's Joint, an organization designed to provide recreational activities and social supports to meet the needs of developmentally disabled persons living in the Sacramento area. Examples of recreational activities include bowling, fishing, baseball and basketball.

S.T.E.P.'s most recent budget for supported living services for claimant - which involved claimant living with a peer roommate - was \$7,070 per month. That budget did *not* include the cost of a vocational day program.

12. According to Bazile-Fernandez, S.T.E.P. operates a job development and placement program which is managed by persons fluent in ASL, many of whom are also deaf. There is a 1:3 staff-client ratio. The community-based vocational program provides ongoing support to clients and their employers, and it encourages "micro-enterprise" activities whenever possible. Examples of vocational activities include clerical work, landscaping, deliveries, and working in a youth hostel. The S.T.E.P. vocational program provides job-related transportation.

The cost of the vocational program is \$61.89 per day, with a maximum of 23 work days per month, totaling about \$1,423 per month.

13. Lisa Price, an employee and counselor with the Center on Deafness – Inland Empire, has provided services to the deaf community within the Inland Empire for the past

12 years. She was very familiar with the vocational workshops available to the deaf in the Inland Empire. While she had not personally visited the S.T.E.P. program in the Sacramento area, she was familiar with it through its website. In addition, Price was present throughout Bazile-Fernandez's testimony and gained further understanding about the S.T.E.P. program through that testimony.

Price believed S.T.E.P. could offer an SLS program and superior vocational program to claimant than his current program. Price stated there was nothing similar to the S.T.E.P. vocational program in Southern California designed to meet the needs of the deaf and, from her professional point of view, she wishes there was.

14. Jacqueline Seccia, a Department of Rehabilitation employee who works with Lori H., has been employed as a vocational rehabilitation counselor for the past 17 years, serving the deaf and hard of hearing in the Inland Empire. Seccia believed claimant was not being well served in the Exceed program.

According to Seccia, most of the employment opportunities available to her clients come from Employment Development Department and Southern California Rehabilitation Services. Neither of those agencies provides specific employment opportunities to developmentally disabled persons who are deaf, a class of persons that has great difficulty finding appropriate work within the Inland Empire.

15. According to Bazile-Fernandez, S.T.E.P. enjoys a position of respect and trust with the ACRC. Before accepting a person into one of its programs, S.T.E.P. conducts a formal assessment to determine the kinds of services and supports that are needed to meet an applicant's unique needs. S.T.E.P. contacts the ACRC to advise of the interest of a regional center client living outside of the ACRC's catchment to participate in the S.T.E.P. program. S.T.E.P. assists that individual in becoming an ACRC client.

The time it takes to transition a client from another regional center into the Alta California Regional Center varies, but it primarily depends upon how quickly the other regional center processes necessary documents and provides that documentation to the ACRC. According to Bazile-Fernandez, the transition has taken as little as 45 days and it has taken as much as two years, but a consumer's transition from another regional center to the ACRC typically takes about 60 days.

16. In claimant's case, a comprehensive SLS assessment was conducted by Samuel Holden, a S.T.E.P. coordinator, in early 2006. The assessment included meeting claimant and his mother at S.T.E.P. headquarters in Sacramento, showing claimant and his mother several living situations, reviewing available records, and spending one day in the Inland Empire observing claimant in his current settings. Holden's assessment noted that claimant has never lived alone and that he would likely experience some difficulty adjusting to an entirely new living experience in Sacramento. The assessment carefully detailed claimant's abilities and needs.

17. Following Holden's assessment, claimant was provisionally accepted into the S.T.E.P. program. The ACRC was notified of that determination. Carol Wilhelm, an ACRC consumer services coordinator, was assigned to help with any transition.

18. Lori H. did not easily reach the conclusion that it would be in her son's best interest to leave the family and home in Riverside to start a new life in the Sacramento area. She considered many factors in reaching that decision. First, the Exceed program was not meeting her son's needs as a developmentally disabled and deaf individual. He was unable to communicate with his peers, he became bored at work, and his behavior was sometimes unacceptable during down time. Second, it appeared that the S.T.E.P. programs were better designed to meet her son's unique needs and S.T.E.P. had more experience in dealing with the deaf. Third, it appeared unlikely that programs similar to the S.T.E.P. programs would become available in the Inland Empire in the near future. Lori H. believed that her son's prospects of continued growth and independence would be best promoted in Sacramento, even though making the transition might be somewhat painful and traumatic for claimant and herself. Ultimately, Lori H. decided she did not want to deny her son the inevitable benefits that would come from living in a better equipped, more supportive environment.

Consideration has been given about how the family can keep in touch with claimant and minimize the trauma that comes with a move. Claimant's mother has a videophone and, according to Bazile-Fernandez, videophone conferencing in real time is available to S.T.E.P. clients. Air travel is available from Sacramento to the Inland Empire, so physical contact can be maintained on birthdays and important holidays.

19. Claimant's most recent IPP was completed on February 9, 2006.

The first long-term goal identified in the IPP was "Alex will live with his family." However, the "current situation" portion of the IPP stated, "Mom is looking into having Alex go up north to live and be a part of the S.T.E.P. supported living service program. She would like Alex to transfer services to Alta Regional when he is stable." This information and Lori H.'s testimony does not compel the conclusion that that claimant's continued residency in the family home remains a long-term goal.

The second long-term goal was "To have an appropriate day program." Claimant was currently attending the Exceed program, but Lori H. was not satisfied with that program and she believed claimant would be better served in a program that met all his needs including his deaf needs. The program offered by S.T.E.P. was mentioned as an alternative.

The third long-term goal was "Maintain health" and the fourth long-term goal was to "maintain oral hygiene." These goals can be met as easily in Northern California as they can in Southern California.

The next long-term goals were "Improve independent living skills" and "Improve daily self-help skills." In each instance, support was going to be provided by claimant's

mother and/or other family members. While a transition will be difficult, this kind of support can be provided in a supported living services program away from home.

The final long-term goal was “Improve interaction with others.” This goal was supposed to be accomplished through the family and the day program, but this goal was not being met through claimant’s day program with Exceed. It was unlikely an adequate program could be developed in the Inland Empire to meet claimant’s needs as a deaf person with developmental disabilities. However, S.T.E.P. provides the unique the kinds of unique services that can help claimant improve his interaction with others through a variety of social and recreational programs.

20. Lori H. believed that those persons who know claimant best and those professionals and entitles who specialize in providing the unique services and supports needed by deaf persons with a developmental disability should be responsible for making the decisions in this matter. There was considerable wisdom contained in that belief, particularly when the service agency would likely be able to transfer responsibility over claimant to the Alta California Regional Center within a couple of months after claimant’s move to the Sacramento area.

21. On May 19, 2006, the service agency sent a letter to claimant’s mother advising her that her request for service agency funding of the S.T.E.P. supported living services program and for service agency funding of the S.T.E.P. vocational day program was being denied on the grounds that the request was premature and because the service agency believed it was in claimant’s best interest to remain in the family home.

On May 30, 2006, the service agency received Lori H.’s request for a mediation and/or a fair hearing.

On July 6, 2006, mediation was conducted. The parties were unable to reach an agreement.

On July 17, 2006, the fair hearing was conducted in San Bernardino, California. The record was opened, the issue to be decided was identified, an opening statement was given, documentary evidence was presented, sworn testimony was received, closing arguments were waived, the record was closed, and the matter was submitted.

## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) was designed to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from their families and communities, to enable these persons to approximate the pattern of everyday living of nondisabled persons of the same age, and to permit them to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Under the Lanterman Act, the “State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge.” (Welf. & Inst. Code § 4501.) California recognizes that “[p]ersons with developmental disabilities have the same legal rights and responsibilities [as those] guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.” (Welf. & Inst. Code § 4502.) Statutory rights include a “right to treatment and habilitation services and supports in the least restrictive environment.” (Welf. & Inst. Code § 4502, sub. (a), § 4620, §§ 4646-4648; *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 389.)

3. Welfare and Institutions Code section 4512, subdivision (a) defines “developmental disability” as:

“[A] disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.”

4. Welfare and Institutions Code section 4512, subdivision (b) defines “services and supports” as:

“[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.”

5. The Department of Developmental Disabilities (the DDS), a public agency, is responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities. (Welf. & Inst. Code § 4416.)



The DDS contracts with private non-profit community agencies called “regional centers” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code § 4620.)

The DDS is authorized to promote uniformity and cost-effectiveness in the operation of regional centers, but its responsibility “does not extend to the control of the manner in which [regional centers] provide services or in general operate their programs.” (*Association for Retarded Citizens v. Department of Developmental Services, supra*, at pp. 389-390.)

6. The Lanterman Act establishes a regional center’s responsibilities to its consumers under Welfare and Institutions Code sections 4640-4659.

Under Welfare and Institutions Code section 4646:

“(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

and,

“(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer’s goals, objectives, and services and supports that will be included in the consumer’s individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.”

7. A regional center must develop and implement an individualized program plan (IPP) for each consumer which specifies the consumer’s needs for services and supports. These services and supports appear in statements of goals and also specific time-limited objectives in the IPP. Under the Act, both goals and objectives “shall be stated in terms that allow measurement of progress or monitoring of service delivery.” (Welf. & Inst. Code § 4646.5, sub. (a)(2).)

The IPP must be reviewed, reevaluated and modified no less than every three years by a planning team composed of regional center staff, the consumer, and where appropriate, the consumer’s parents, to ascertain whether the planned services have been provided and the

objectives have been fulfilled within the time specified in the IPP. (Welf. & Inst. Code §4646.5, sub. (b).)

8. Welfare and Institutions Code section 4648 states in part:

“In order to achieve the stated objectives of a consumer’s individualized program plan, the regional center shall conduct activities including, but not limited to all of the following:

(a) Securing needed services and supports . . .

(1) It is the intent of the legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined by the consumer’s individual program plan.

(2) . . . Services and supports shall be flexible and individually tailored to the consumer . . .

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer . . . which the regional center . . . determines will best accomplish all or any part of that consumer’s program plan.”

9. Welfare and Institutions Code section 4648, subdivision (a)(6), provides:

“The regional center and the consumer . . . shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider’s ability to deliver quality services or supports which can accomplish all or part of the consumer’s individual program plan.

(B) A provider’s success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification.”

10. The statutory provisions mentioned herein required the IRC to take into consideration claimant’s unique needs and claimant’s parent’s preferences. Claimant has special needs as a result of his deafness. Claimant’s mother expressed a strong preference for claimant to participate in the S.T.E.P. programs, based on claimant’s mother’s knowledge of those programs and her knowledge of her son’s unique skills, abilities, deficits and needs. Claimant’s mother personally investigated the S.T.E.P. programs and she wisely sought the

advice and counsel of persons in the Inland Empire who were knowledgeable about the vocational opportunities and supported living services available to her son locally. Insofar as claimant's needs are concerned, the services offered by S.T.E.P. are vastly superior to those currently available to claimant if he were to continue residing in the Inland Empire. The services offered by S.T.E.P. better meet the actual goals expressed in claimant's IPP. It is in claimant's interest that the service agency be ordered to fund a supported living services program and a vocational day program for claimant through S.T.E.P. for a period not to exceed 90 days, unless otherwise agreed, during which period claimant, his mother, his family, the service agency, S.T.E.P. and ARCA will be able to determine if the S.T.E.P. program is suitable and if claimant is eligible to become an ARCA client. If, after 90 days, the claimant's transition from the Inland Regional Center to ACRA has not been completed, the orders requiring service agency funding shall cease. The orders set forth herein are made without prejudice to either party filing for an additional fair hearing upon a change of circumstances.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

#### ORDERS

1. The service agency shall fund a supported living services program and a vocational day program for claimant through S.T.E.P. for a period not to exceed 90 days.
2. The service agency shall assist claimant, his mother and ARCA in completing all necessary paperwork to assist claimant to become an ARCA client at the earliest possible date, but in no event to exceed 90 days.

#### NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.

DATED: \_\_\_\_\_

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JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings